15: Khadduri S-4 (no date) 1951 MDl Syria MDl

The Middle East Journal

VOLUME 5 SPRING 1951 NUMBER 2

CONSTITUTIONAL DEVELOPMENT IN SYRIA

With Emphasis on the Constitution of 1950

Majid Khadduri

G42
G47

SYRIA HAS experienced a number of constitutional vicissitudes since its separation from the Ottoman Empire after World War I. A monarchy for a short period under Faysal, it then passed, against its will, into the position of a mandated territory under French administration. Another eight years elapsed before the struggle between the Mandatory and the Syrian nationalists was sufficiently resolved to permit the formulation of a constitution even remotely agreeable to both parties, and never during the period of the mandate was any constitution consistently in full force. This record might be attributed to the conflict between an unbending French colonial policy and an equally uncompromising Syrian nationalism, but after Syria attained its independence in 1945–46, it still experienced a series of coups and counter-coups. Finally, a completely revised consti-

* MAJID KHADDURI is Professor of Middle East Studies at the School of Advanced International Studies of the Johns Hopkins University.

15: Khadduri 3-4 (no date) 1951 MEJ Syria

642 648 ution was drafted and promulgated in September 1950 with high hopes that it might prove to be the panacea for all of the country's ills.

This process, however, should not be regarded as evidence of inherent insecurity in Syria's political life, but rather as a transitory stage in its constitutional evolution. In it can be seen the gradual ironing out of doubts and conflicts over the nature of the Syrian state, the proper functions of its government, and its relations with the outside world, social and economic as well as political. Syria has freed itself too recently from foreign influence for it to have adjusted fully to both national and international circumstances.

FROM A NATIONAL MONARCHY TO A MANDATORY ADMINISTRATION

642 Amir Faysal, at the head of an Arab army, entered Damascus in October 1918 with the avowed intention of establishing an Arab government. But before he had time to organize a constitutional regime, he was caught up in the larger issue of the peace settlement regarding the whole Arab world. The Syrians, too impatient to wait for the final decisions of the Peace Conference and suspicious of what these decisions would be, called a Syrian Congress representing "Greater Syria" (including Lebanon and Palestine), on the basis of the old Ottoman Electoral Law.[1] This Congress, functioning as both Legislative Assembly and National Convention, considered all matters related to national and foreign policy as well as the drafting of a constitution. It held three main sessions between June 3, 1919, and July 19, 1920. It prepared, during its last session, a draft constitution of 148 articles which, though no formal final vote was taken, had been accepted in principle.[2] The Congress was still considering the second reading when the crisis with the French authorities

666 [1] Elections were actually held only in the interior of Syria; the deputies from Lebanon and Palestine, owing to the objection of the French and British military authorities to the elections, were chosen on the basis of petitions signed by voters in support of their candidates. See Philippe David, *Un Gouvernement Arabe à Damas: Le Congrès Syrien* (Paris, 1923), pp. 52–63.

[2] Cf. Philippe David, *op. cit.*, p. 107.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

developed and it adjourned on July 19, 1920, never to meet again.[3]

The Constitution of 1920 provided for a limited monarchy, a bicameral legislature, and a responsible ministry: provisions for the structure of the central government followed the normal pattern of West-European constitutional monarchies. Syria was to be an indivisible political unit, but its boundaries were left undefined. The Syrian Government was to be an Arab Government, its capital Damascus, and its religion Islam. The Constitution included a Bill of Rights guaranteeing civil liberties and freedom of thought and of religion. The monarchy was to be vested in the Hashimi family, with Faysal the first king. Both the Senate and the Chamber of Deputies were to be elected bodies; the deputies by secret ballot in two degrees, and the Senators by the Chamber of Deputies of each province. The administration of the country was to be on a "decentralized" basis: each province was to have its own local administration with a single legislative body called the Chamber of Deputies. The judiciary was to be independent, with a High Court appointed by the King as the supreme judicial organ.[4]

The work of the Syrian Congress was cut short by French action. At a meeting of the San Remo Conference on April 24, 1920, the mandate over Syria and Lebanon was given to France. On July 14 General Gouraud sent an ultimatum to Faysal demanding, *inter alia*, the acceptance of the French mandate and dismissal of the Syrian national army.[5] Faysal's reply, accepting the terms of the ultimatum, was sent a few hours before the expiration of the time limit but did not arrive in time.[6] French troops at once proceeded to establish their authority. Faysal's

[3] On the work of the Syrian Congress, see Philippe David, *op. cit.*, Chapters 6 and 8; Amin Sa'id, *Al-thawra al-arabiyyah al-kubra* [*The Great Arab Revolt*] (Cairo, 1934), Vol. II, pp. 18-25, 230-32; Sati' al-Husri, *Yawm Maysalun* [*The Day of Maysalun*] (Beirut, 1947), pp. 245-60.

[4] For text of the Constitution, see Appendix to Philippe David, *op. cit.*, pp. 135-53.

[5] For the text of the ultimatum and the events leading to it, see Sati' al-Husri, *op. cit.*, pp. 368 f.; George Antonius, *The Arab Awakening* (London, 1938), pp. 306-309; J. de V. Loder, *The Truth about Mesopotamia, Palestine, and Syria* (London, 1923), pp. 77-79; Amin Sa'id, *op. cit.*, Vol. II, pp. 267-74.

[6] The Congress was adamant in its opposition, but the Cabinet approved the acceptance of the ultimatum. See Sati' al-Husri, *op. cit.*, pp. 118, 124, 221.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

648 meagre forces were shattered at Maysalun (July 24, 1920), and his Arab regime went to pieces.

The elimination of the Arab Government was no difficult problem to France, but its replacement by another proved to be a problem of great complexity since the Syrian nationalists, humiliated by France at Maysalun, now were unprepared to accept anything short of complete independence. They not only refused to cooperate with France in the administration of the mandate, but also began actively to oppose French rule by petitions to the League of Nations, strikes and demonstrations, and eventually armed uprisings. The most serious action was the general Syrian revolt of 1925–27 which came very near to liberating Syria from French rule.

The Syrian revolt taught both France and Syria that a compromise must be sought. In the fall of 1926 the Syrian nationalists submitted to M. Ponsot, the new High Commissioner, a memorandum in which they asked France (1) to "forget the past" and inaugurate a period of cooperation; (2) to hold elections for a Constituent Assembly and promulgate a constitution; (3) to achieve Syrian unity; (4) to organize a national army; (5) to conclude a treaty of alliance between Syria and France which would replace the mandate; (6) to admit Syria to membership in the League of Nations; and (7) to proclaim a general amnesty.[7] On July 26, 1927, M. Ponsot issued a statement in which he conceded certain national demands, such as the preparation of a constitution and eventual transformation of Syria's mandatory status to one of full independence.[8] After further negotiations between M. Ponsot and such leading Syrian nationalists as Hashim al-Atasi and Ibrahim Hananu, it was finally agreed to hold general elections for a Constituent Assembly.

In accordance with Article I of the mandate, France was required to promulgate within three years an organic law for Syria. It had, however, taken no less than six years from the coming into force of the mandate in 1922 to persuade the Syrian nationalists to accept a compromise on a national regime. On February 12, 1928, M. Ponsot appointed Sheikh Taj al-Din al-

[7] Amin Sa'id, *op. cit.*, Vol. III, p. 522.
[8] *Ibid.*, pp. 527–31. For French text, see *Le Temps*, July 31, 1927.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

Hasani, Qadi of Damascus and a moderate nationalist, as head of a provisional Government charged with holding general elections and calling a Constituent Assembly. Recent insurgents and political prisoners were released.[9]

THE CONSTITUTION OF 1930

The elections for a Constituent Assembly were held in April 1928 and the Assembly met at Damascus on June 9. M. Ponsot, in his inaugural address, declared that once the Assembly had completed its work the time would have come for placing the relations between France and Syria on the basis of a treaty. Sheikh Taj al-Din declared that the Assembly "will have full freedom in the drafting of the Constitution."[10] The Assembly elected Hashim al-Atasi, leader of the Syrian nationalists, as its president; and appointed a drafting committee of 27 members, with Ibrahim Hananu as its chairman and Fawzi al-Ghazzi as rapporteur.

The drafting of the Constitution was primarily the work of a subcommittee of three, Fawzi al-Ghazzi, Fa'iz al-Khuri, and Zaki al-Khattib, under the chairmanship of al-Ghazzi. Studying in detail the constitutions of Lebanon, Egypt, Iraq, Iran, France, and Belgium, as well as the old Ottoman Constitution of Midhat Pasha, the committee submitted its draft to the Constituent Assembly for discussion on August 2. As finally accepted in principle, the draft stipulated that Syria within its natural boundaries is an indivisible political unit and an independent sovereign state; its form of government is republican; and the religion of its head is Islam. The capital of the state is the city of Damascus. The Constitution provided, likewise, a Bill of Rights, in which the principles of liberty, equality, private property, etc., are all guaranteed

The form of government is parliamentary, but the head of the executive power is the President of the Republic. He is elected by Parliament for a period of five years, but he is not eligible for re-election until the lapse of five years from the

[9] With the exception of 39 persons whom the High Commissioner refused to set free.
[10] *Jalsat al-majlis al-ta'sisi al-suri* [*Proceedings of the Constituent Assembly*] (Damascus, 1928), pp. 1–3.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

expiration of his term. The President selects the Prime Minister and appoints the ministers upon the latter's recommendation. He sanctions legislation and signs treaties; but treaties and contracts having to do with the security of the State and its financial policy must be approved by Parliament. The President is not responsible, since every decision or decree made by him should be countersigned by the Minister or Ministers concerned, except the decree for appointing a Prime Minister. The President calls, prorogues, and dissolves Parliament upon the recommendation of the Cabinet. The Cabinet is composed of not more than seven members who are individually, as well as jointly, responsible to Parliament. The Ministers need not be members of Parliament, but they can attend and take part in Parliamentary debate.

Parliament is made up of one House (the *Majlis,* or Chamber of Deputies), which is freely elected every four years and sits in two sessions each year — from mid-March to the end of May, and from mid-October to the end of December. The Chamber of Deputies meets in public as well as in secret session and its members enjoy full parliamentary immunity during the session. Every male Syrian who has attained his twentieth year can vote. Parliament can initiate legislation, except perhaps financial bills, and can ask questions regarding the conduct of any Ministry. The Constitution provided also for the establishment of a High Court composed of 15 members to be chosen from Parliament and from among competent judges. This Court is regarded as the supreme judicial organ of the State. Finally, the Constitution might be amended by two-thirds of the members of Parliament or at the request of the President of the Republic in agreement with the Council of Ministers and with the approval of two-thirds of the Parliament.

The draft constitution may be regarded as expressing the free will of the Syrian people. It ignored entirely France's obligations as a Mandatory Power toward the League of Nations, since the Constituent Assembly regarded Syria both as fully independent and as an indivisible political unity; that is, to include Lebanon and Palestine. The High Commissioner, placed in an impossible position, informed the Assembly that certain articles in the draft called for express reservations on his part, some be-

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

cause they were in formal contradiction with France's international obligations as a Mandatory Power, others because they could not be given practical effect without a previous agreement with France. The following articles were specifically objected to:

Article 73. The President exercises the right of pardon. Amnesties can only be granted by law.

Article 74. The President concludes and signs treaties; but treaties concerning the security of the state or the public finances, treaties of commerce, and, in general, all treaties which cannot be denounced at the expiration of each year do not become definitive until they have been voted by Parliament.

Article 75. The President of the Republic nominates representatives abroad and receives foreign representatives.

Article 110. The organization of the future army will form the subject of a special law.

Article 112. The President of the Republic may, on the proposal of the Council of Ministers, proclaim a state of siege in disturbed districts, on condition that he inform Parliament immediately. If Parliament is not in session, the President will proceed to summon it without delay.

Further, Article 2, declaring Syria to be both indivisible and fully sovereign, the High Commissioner stated, was in conflict not only with international agreements, but with a "situation of fact and of law" which could not be modified by a unilateral decision.[11] He suggested that the Assembly should separate (*disjonction*) the foregoing six articles. Sheikh Taj al-Din, the Prime Minister, endorsed the request of the High Commissioner and asked the Assembly to delete these articles until the question of relations with France was settled by a treaty of alliance.[12]

The High Commissioner's message and Sheikh Taj al-Din's statement aroused the indignation of the Assembly. The unanimous opinion of the members was that those six articles were the only ones that mattered and that their separation would virtually "leave nothing significant" in the constitution. The Assembly therefore handed the High Commissioner a formal note of rejection. The High Commissioner retorted by adjourning the Assembly for three months; but the Assembly, meeting for the

[11] *Rapport à la Société des Nations sur la situation de la Syrie et du Liban*, p. 16. See also *Proceedings of the Constituent Assembly*, p. 278.

[12] For the Assembly's reactions, see *Proceedings of the Constituent Assembly*, p. 279-308 passim.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

last time on August 10, 1928, passed a resolution empowering its President to negotiate on its behalf with the authorities "for the fulfilment of the country's [national] aspirations." But negotiations between the leading Syrian nationalists and the High Commissioner led to no agreement. Following an exchange of a number of proposals and counter-proposals, the High Commissioner, by a decree issued on February 5, 1929, prorogued the Constituent Assembly *sine die*.[13] It was over a year later, on May 14, 1930, that M. Ponsot, after consultations in Paris, surprised the nationalists by promulgating the Constitution. The text included Article 2 as altered by a previous proposal of his to reduce it to "Syria is an indivisible political unity," but the other articles in question remained unchanged. There appeared also a new provision (Article 116) withholding from application all provisions which infringed upon France's international obligations relative to Syria, or dealt with the maintenance of security or with foreign relations. Such provisions would become applicable only after special agreement between Syria and the French Government. The Nationalists somewhat grudgingly decided to take part in the elections on this basis, but another eighteen months elapsed before M. Ponsot issued orders for holding them. The elections were finally completed on March 30, 1932, and resulted in a victory for the moderates rather than the nationalist elements.

When Parliament met on June 7, 1932, there was considerable discussion regarding the election of the President. The Nationalists' candidate, Hashim al-Atasi, could muster only 17 votes; nevertheless they declared their intention of withdrawing from Parliament if the Government insisted upon the election of one of its two candidates: Subhi Barakat or Haqqi al-Azm. A compromise was finally reached by electing Muhammad Ali al-Abid, who was *persona grata* to both groups, on the understanding that he would select Haqqi al-Azm, candidate of the moderates, as Prime Minister. In this way the first republican administration was established by the French in cooperation with the Syrian

[13] For these proposals and counter-proposals, see Amin Sa'id, *op. cit.*, Vol. III, pp. 530-31. For the French version, see *Rapport à la Société des Nations sur la situation de la Syrie et du Liban*, pp. 20-22.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

nationalists. And it was thus that the long period of "provisional" administrations, under the direct control of the French High Commissioner, came to an end.

THE FIRST REPUBLIC

Constitutional evolution during the first republic largely involved attempts to formulate treaty relations with France. There were two major efforts in this direction and both were unsuccessful. The main obstacle to successful treaty negotiations in 1933 was France's disregard of Syrian unity.[14] Not only did the French insist that Lebanon be excluded from any future Syrian state — even Jabal Druze and Latakia were to remain semi-independent.[15] The Nationalists also objected to the uncertainty over the abolition of the capitulatory regime, the unlimited rights given to France to maintain forces on Syrian territory, and the creation of a department of common interests for the regulation and control of the economic resources in which France was to have a preponderant position.[16]

A draft treaty was in fact signed on November 16, 1933. Following a brief and inconclusive debate, during which the principal objections raised by the Nationalists were reiterated, the High Commissioner suspended Parliament. Two days later, on November 26, the President of the Syrian Republic withdrew the treaty from Parliament at the High Commissioner's request. Parliament was suspended, and a year later dissolved *sine die*, with the President of the Republic authorized to govern by decrees. In 1934 the Government of Haqqi al-Azm was replaced by that of Sheikh Taj al-Din, who remained in office for about two years. Thus the first attempt at solving relations between France and Syria failed, with consequential impairment of the constitutional organization which had just been set up.

France's second attempt to come to an agreement with the

[14] The two Nationalist Cabinet members resigned in protest on April 12. For text of the manifesto giving their reasons, see Amin Sa'id, *op. cit.*, Vol. III, pp. 575–76.

[15] For a discussion of the policy of division in Syria compared with the unitary policy of Britain in Iraq, see A. J. Toynbee, *Survey of International Affairs, 1934* (London, 1935), pp. 284–88, 290–96.

[16] For a discussion of the Principal Syrian objections to the treaty and its comparison with the British treaty with Iraq, see George Antonius, "Syria and the French Mandate," *International Affairs*, XIII (1934), pp. 552 ff.

15: Khadduri 5-4 (no date) 1951 MD1 Syria MD1

Syrian nationalists took place in 1936 when the international situation had become critical in consequence of Mussolini's occupation of Ethiopia. Prompted by his threat to the Eastern Mediterranean, and inspired by Britain's successful move in the same year to appease the Egyptian nationalists, France once more offered to negotiate a treaty which would give Syria full independence. There was at this time the more liberal Popular Front Government in Paris, with Leon Blum as Prime Minister and Yvon Delbos as Foreign Minister, both of whom were more sympathetic toward Syria's national aspirations than their predecessors. The resulting treaty of September 9, 1936, negotiated by a Syrian Nationalist delegation in Paris, provided for the replacement of the Mandate by a Treaty of Alliance with France on the basis of full independence. While Lebanon was to remain outside of Syria, the autonomous districts (Jabal Druze and Latakia) were to join a unitary Syrian state. France was to receive certain rights regarding its military position in the Levant (as in the case of Britain in Iraq) and the two countries were to consult each other in all matters of foreign policy affecting their common interests. The Treaty was to last for 25 years and to come into force, as in the case of Iraq, when Syria was admitted to membership in the League of Nations as an independent state. Elections for a new Parliament which was to ratify the Treaty were held in November 1936, and resulted in an overwhelming majority for the Nationalists (Kutla Party). Parliament met on December 21 and elected Hashim al-Atasi, leader of the Kutla, President of the Republic in place of Muhammad Ali al-Abid. Faris al-Khuri, a member of the Kutla, was elected President of the Majlis (Parliament), while Jamil Mardam, another Kutla leader, formed the new Government. All members of the Cabinet were drawn from the Kutla Party. The Treaty with France, regarded as a victory for the Kutla, was approved by Parliament and formally signed by the Government and the High Commissioner on December 22, 1936. But it was never ratified by France owing to criticism leveled against it from military and conservative quarters.[17] In 1938 Jamil Mardam tendered his resignation,

[17] For a discussion of France's failure to ratify the treaty, see Charles-André Julien, "French Difficulties in the Middle East," *Foreign Affairs*, XXIV (1946), pp. 327 ff.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

which was followed by that of President Hashim al-Atasi, and the French High Commissioner suspended Parliament. Thus the second attempt to come to an understanding with Syria failed.

NATIONAL REGIME: THE SECOND REPUBLIC

The outbreak of World War II brought renewed hopes for independence. Upon France's defeat in 1940 the Syrian Nationalists began to agitate for the immediate formation of a national Government; indeed some of them went so far as to contact secretly the Iraqi nationalists, inviting them to intervene and unite the two countries under the Crown of Iraq. A few urged cooperation with the Axis, but the failure of the Rashid Ali movement in Iraq raised doubts as to the feasibility of achieving Arab national aspirations along this path, and on the whole the moderate elements began to come to the fore.

The joint Anglo-French occupation of Syria and Lebanon in 1941 brought with it a promise of independence. A Provisional Government was appointed, and on September 28, 1941, General Catroux formally proclaimed the independence of Syria. The Constitution, however, was not at once restored, and the Nationalists, led by Shukri al-Quwwatli, revived their activities. They pledged cooperation with the democratic powers, but demanded either the immediate restoration of the Majlis of 1936–39 or the holding of new elections. Finally, in January 1943 M. Helleu, representing General Catroux, French Delegate-General, announced the restoration of the Constitution and initiated arrangements for general elections. These were held on July 26, with the Nationalist Party (al-Kutla) overwhelmingly victorious.

The Majlis met on August 17, 1943, and elected Shukri al-Quwwatli, who had emerged as the unrivaled leader of the Nationalists, President of the Republic, and Faris al-Khuri President of the Majlis. On August 19 the President invited Sa'dullah al-Jabiri to form a new Cabinet, drawn almost wholly from the Kutla, and the Government began immediately afterward to negotiate with the French authorities for the transfer of such controls as the French still exercised.

Syria's struggle against foreign control was thus fully re-

warded. Not only did it emerge as a sovereign state, but it successfully avoided entering into any such special treaty relations with France as Great Britain had managed to establish with Iraq. The Nationalists' cause was won, the *amour propre* of the Syrian people was gratified. Syria became, of all the Arab states, the first to shape freely its social, cultural, economic, and political affairs.

Independence, however, was not coupled with that full political unity which the Nationalists held almost as dear. Not only did Palestine remain completely beyond the bounds of a possible Syrian state: Lebanon has definitely refused to join Syria in any form of union which would destroy or encroach on its sovereign attributes, and Jordan has accepted union only on its own terms. The dismemberment of Syria after World War I has not been repaired by the mere withdrawal of foreign control, and the "Greater Syria" plan, designed to regroup the various fragments into a sort of federal union has raised the complex problem of adjusting the internal differences and vested interests which were partially submerged in the struggle against foreign control. Thus the question of Syrian unity, whether in the form of a Greater Syria, Syro-Iraqi unity, or Fertile Crescent scheme, remains one of the factors influencing Syria's constitutional evolution.

Probably far more disrupting to the present Syrian state than the question of unity is the lack of cohesion among the various political forces. Stability in government presupposes the development of constitutional traditions. Frequent changes of regime, a prolonged program of noncooperation with, and at times violence against, foreign rule hardly afforded an opportunity of developing the tradition of responsibility necessary for stable government.

It was not until August 1947, when the term of office of President Quwwatli was due to expire, that a formal amendment of the 1930 Constitution was proposed, and not until November that any action was taken. Article 68, which prohibited the eligibility of the President for re-election was to be amended to permit a second term, but a third term was made possible only after the lapse of a period of five years. Articles 85 and 86, dealing with the procedure and time of the election of the President,

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

were to be carried out by a special decree. Article 89, which specified that the number of ministers was not to exceed 7, was amended to read 12. Finally, Articles 71 and 115, specifying the procedure of electing the first President of the Republic, were deleted.[18]

THE MILITARY COUPS D'ÉTAT

The Quwwatli regime, which could flatter itself on having achieved full independence for Syria, failed to inaugurate the reforms which were so badly needed. The criticism levelled against the Government — that it was corrupt and permitted the aggrandizement of its Ministers — might have been exaggerated, but it will be noted that the Government's "constitutional reform" merely amended those articles which related to the re-election of Quwwatli to the Presidency and to the Cabinet membership, ignoring many other gaps and defects in the constitutional organization of the State. This fact lent substance to the criticism that the Government paid attention only to matters that served the interests of the ruling oligarchy.[19]

Matters came to a head when the Syrian Government (jointly with the other Arab Governments) failed to forestall the establishment of a Jewish State in Palestine. The Quwwatli regime's attempt to shift the responsibility of defeat to the Army precipitated a reaction. Colonel Husni al-Za'im, secretly encouraged by the opposition parties, raised a military coup d'état on March 30, 1949, which overthrew the Quwwatli regime amidst popular enthusiasm and approval.[20]

Za'im's coup, by eliminating the party which was so avowedly opposed to uniting or even cooperating with the two neighboring Hashimi Kingdoms, at once reopened the question of the future organization of Syria: whether it would be monarchical, by joining a union with Iraq, or maintain a separate republican

[18] For text of the Amendment Law, see the Syrian *Official Gazette*, Vol. 30 (March 25, 1948), p. 756. For further details on the Amendment of the Constitution, see Wajih al-Haffar, *Al-dastur wa al-hukm* [*The Constitution and the Government*] (Damascus, 1948), pp. 125–30.

[19] Wajih al-Haffar, *op. cit.*, pp. 133–54; M. Kurd Ali, *Al-Mudhakarat* [*Memoirs*] (Damascus, 1948), Vol. II, p. 530.

[20] For the background of this movement, see Alford Carleton, "The Syrian Coups d'Etat of 1949" *Middle East Journal*, IV (Jan. 1950), pp. 1–11.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

regime. Both Iraq and Jordan, arguing that a union with Syria would strengthen their position against Israel, opened negotiations with Za'im. Pressed by an immediate need to strengthen his position in the forthcoming armistice negotiations with Israel, Za'im offered to conclude an immediate military alliance with a pledge to consider the larger scheme of future cooperation with the Hashimi Kingdoms later on. He refused, however, to commit himself on whether he favored a republican or monarchical regime.[21]

Za'im's move toward negotiation with the Hashimi Kingdoms aroused the fear of the Saudi-Egyptian bloc that a rapprochement would lead to an extension of Hashimi rule to Syria. Egypt and Saudi Arabia therefore countered with promises of recognition and assurances of military and financial aid. This Saudi-Egyptian intervention was so successful that it not only doomed a Syro-Iraqi dual monarchy (with possible extension to Jordan) but inspired Za'im to reach for the highest position of his country — an ambition which sowed the seeds of disagreement between him and his supporters, both civil and military, who now argued that Za'im had betrayed the cause for which they had instigated the coup, namely to rid the country of the Quwwatli regime.

In April 1949 Za'im dismissed Parliament and ordered new elections on the basis of universal suffrage, including women — the first to be thus held in an Arab country. After Za'im's election to the Presidency, preparations were made to promulgate a new Constitution into which liberal principles were to be introduced, especially relating to land reform. This Constitution, though completed, was never promulgated; but a new civil code, bearing the stamp of the Egyptian jurist Sanhuri Pasha (who had already started research along this line at the initiation of the Iraqi Government), was issued. Although based on both European models and the principles of Islamic law, this code materially restricted the authority of the latter. It is regarded as one of the permanent contributions of Za'im's short-lived regime.

[21] The relations of the Syrian coups d'état to the schemes of unity with Iraq and Jordan are discussed in detail in a paper by the present writer entitled "The Scheme of Fertile Crescent Unity" contributed to a volume to be published shortly by the Harvard University Press.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

Za'im was overthrown by his opponents on August 14, 1949, having remained in power only four and a half months. Colonel Sami al-Hinnawi, who led this second coup and executed Za'im, reversed the policy of friendly relations with the Saudi-Egyptian bloc and again opened negotiations with Iraq for a Syro-Iraqi union. Elections for a Constituent Assembly were held in November, but when the Assembly met on December 12 and was about to approve a project for union with Iraq, a third army move on December 14, led by Colonel Adib Shishakli, sealed the fate of unity with Iraq under a dual monarchy. Shishakli declared that the Army would no longer interfere in politics and that government by civilians would be maintained; but it remained clear that the Army would continue to resist any policy which ran counter to its wishes.

The Constituent Assembly elected Rushdi al-Kikhya, leader of the People's Party which won the elections, as its President, and Hashim al-Atasi, an old member of the Nationalist Party, as the temporary head of the State. On January 7, 1950, after a long cabinet crisis attributed to the intervention of the Army in politics, President Atasi took an oath of office and the Constituent Assembly gave temporary legislative and executive powers to the Government, subject to its control, until the promulgation of a Constitution. In the meantime a committee of 33 members, under the chairmanship of Nazim al-Qudsi, was appointed to prepare a draft constitution for the Assembly. The Committee began its meetings on January 4 and completed its work three months later. As its chairman stated in his report to the Assembly, the Committee made use of no less than fifteen European and Asiatic (including Arab) constitutions, and received proposals from individuals and organizations either directly or through the press.[22] The draft Constitution, consisting of 177 articles, was communicated to the President of the Assembly on April 15, 1950, but debate did not get underway until July 7. After prolonged discussion, first on the draft generally and then article by article, the Constitution was approved with considerable changes (including reduction to 166 articles) on September 5,

[22] See text of the Report in the *Official Gazette*, Vol. 32 (June 22, 1950), Appendix, pp. 1–2.

15: Khadduri S-4 (no date) 1951 MD1 Syria MD1

642 1950, and was formally promulgated on the same day by the President of the Assembly.

THE CONSTITUTION OF 1950

The new Syrian Constitution has made no fundamental changes in the form or structure of the Government as it existed in the Constitution of 1930. The most interesting innovations are to be found rather in the general articles expressing the hopes and aspirations of the Syrian nation, in the detailed Bill of Rights, and in those provisions relating to land resources and education. The Constitution opens with a long preamble stressing principles of justice, fundamental civil liberties, fraternity and social consciousness; the liberation of citizens from the miseries of poverty, disease, ignorance, and fear; the principle of equality, defence of the Republic and the Constitution, and the development of individual responsibility and pride in the State. The preamble pays lip service to Arab unity in deference to the Pan-Arabs, and to Islam as the religion of the majority of the people.[23]

As did the Constitution of 1930, that of 1950 declares Syria to be "an indivisible political unity"; but it adds that it forms "a part of the Arab nation" (Article 1). The draft Constitution stated that Syria is "a representative and sovereign Arab Republic," but to this the Constituent Assembly added that it is also "democratic" and "fully" sovereign.[24] Islam was treated as a state religion in the draft constitution, while the other "heavenly religions" were declared "respected" and "sacred"; but the arguments of Christian and liberal Muslim quarters finally prevailed upon the Assembly and the formula of the Constitution of 1930, declaring merely that "the religion of the President of the Republic is Islam," was reinstated. But it was also asserted, prob-

[23] The deference to Islam in the Preamble did not appear in the original draft, but was added later by the Constituent Assembly, in conjunction with its decision to remove the clause declaring Islam to be a state religion, in order to satisfy the religious-minded section of the Assembly.

[24] For text of the draft Constitution as it was taken up by the Constituent Assembly, see *Official Gazette*, Vol. 32 (June 22, 1950), Appendix, pp. 12-27. For the final text as approved by the Assembly, see *ibid.*, Vol. 32 (September 7, 1950), pp. 3159-3175. For the debate on the draft Constitution, beginning with the meeting of July 7, see *Proceedings of the Constituent Assembly*, in the *Official Gazette*, Vol. 32 (1950), pp. 630 ff.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

ably in deference to the feelings of pious Muslims, that "Islamic Law shall be the main source of legislation." (Article 3.) 642

The new Constitution provides that the President, following the pattern of the Constitution of 1930 before its amendment, is elected by Parliament for a term of five years but is not eligible for re-election until an interval of like duration. The President is given certain exclusive powers, such as the right of suspensory veto, the dissolution of Parliament under certain circumstances, the right of appointing the Prime Minister and the other Ministers upon the recommendation of the Prime Minister, and the right to communicate directly with Parliament by messages addressed to its President. He is also held responsible for violation of the Constitution, for high treason, and for ordinary offenses, but he cannot be tried except by the Supreme Court. For other powers which the President exercises in conjunction with the Prime Minister or Minister concerned he is obviously not held responsible. Among such are the powers of appointment of Government officials and judges, sending and receiving diplomats, ratifying treaties with the approval of Parliament, and declaring war and signing peace treaties with the approval of the Council of Ministers, the High Defense Council, and Parliament. If the President is incapacitated from exercising his power for reasons other than death or resignation, the President of the Parliament temporarily exercises these powers. In case of death or resignation, Parliament must meet within ten days to elect another President.

The Cabinet is composed of the Prime Minister and Ministers, the number and functions of whom are to be defined by a special law. The Ministers may or may not be members of Parliament. The Cabinet prepares a platform on the basis of which the Prime Minister asks for a vote of confidence in Parliament; lack of confidence compels the Cabinet to resign. The Cabinet is jointly responsible to Parliament for its general policy, and each Minister is individually responsible for the work of his Ministry. The Ministers are not permitted directly or indirectly to enter into any business transactions with the Government during their terms of office, and they are held liable for indictment and trial 642 646

by the Supreme Court on the accusation of such activity attributed to them.

Parliament is composed of one Chamber of Deputies (Majlis), elected on the basis of direct universal suffrage (including women) for a term of four years. It convenes from October 1 to December 31 and from March 1 to May 15, and each year elects its President on the basis of absolute majority. The Deputies represent the entire nation and not their own constituencies. As in the case of the Ministers, the Deputies are not permitted to exploit their positions in any business transaction with the Government. Legislation, other than financial bills, may be initiated by Parliament or by the President with the approval of the Cabinet; but financial bills which involve reduction of taxes or expenditures of funds must be proposed either by 20 members of Parliament or by the President with the approval of the Cabinet. Article 59 stipulates that Parliament "shall not cede its legislative powers." This article, it seems, was inserted to ensure that Parliament would not follow the example of the Constituent Assembly in delegating legislative, in addition to executive, powers to the Government and thus pave the way toward the realization of a dictatorial regime. If one-fourth of the members of Parliament object to the constitutionality of a bill before its promulgation, or if the President does so, then it is suspended until the Supreme Court passes a decision regarding its constitutionality. If the Supreme Court decides within 10 days that the bill is unconstitutional, it is returned to Parliament for reconsideration.

The judicial system is designed to be free from interference by any other governmental agency. "The honor, conscience, and integrity of the judges are guaranteed for the right and freedom of the people." (Article 105.) The judicial power is exercised by three types of courts: (1) the Supreme Court; (2) the Court of Cassation; (3) ordinary tribunals. The Supreme Court is composed of 7 members to be elected by Parliament from a list of 14 nominees chosen from among highly qualified judges. The members of the Supreme Court are elected for 5 years and are eligible for re-election. They are independent and cannot be discharged except by a decision of the Supreme Court itself.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

The functions of the Court are: (1) to consider the constitutionality of laws, decrees, and any administrative decisions; (2) to conduct the trial of the President of the Republic and the Ministers; and (3) to examine the validity of elections.

For the purpose of the appointment, promotion, transfer, and discharge of judges or the various courts other than the Supreme Court, a High Council of Judges is provided, composed of the President of the Supreme Court, two members of the Supreme Court, and the highest ranking four judges of the Court of Cassation. The Council is set up to ensure that the judicial authority is kept independent of the influence of the Government.

The Constitution provides, likewise, detailed provisions for the division of the country into administrative units and for local provincial government and municipal administration. It also provides rules for the preparation of the budget and the procedure of its introduction to Parliament, as well as other measures related to financial policy. An interesting provision related to the economic development of the country is the establishment of a Permanent Economic Council for the purpose of formulating plans for the development and exploitation of the economic potentialities of Syria.

Probably the most interesting innovation of the Constitution is its Bill of Rights comprising 28 articles which define with considerable detail the fundamental principles of freedom and the social and economic rights of the individual citizen. The numerous provisions stressing liberty and equality of the individual and the freedom of the press may seem superfluous, but they are deemed worthy of emphasis in view of the authoritarian tendency in the administration since the establishment of the national regime.

Article 21 marks a radical departure from the principle of the existing social-economic system. In this article, property is defined as both "public" and "private"; and the State like the individual may possess property within the limits of the law. As to private ownership, "the method of its possession and disposal shall be specified by law in such a manner as to make it perform its social function." Further, no individual is to be permitted to "utilize his private ownership in a manner inconsistent

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

642 with public welfare." All subsoil minerals, solid or liquid, are
423 declared the property of the State; and the State, in the general interest, is permitted to expropriate private property in accordance with a law providing for just compensation. But Article 23 ensures that no "general confiscation" shall be permitted.

The Constitution provides in like manner the way of utilizing the land. It stipulates that land "shall be cultivated and not neglected"; and that should it be left unexploited within a certain period to be specified by law, the right of usufruct is alienated. The Constitution provides, likewise, that "a maximum limit for land ownership shall be prescribed by law," and that small and medium ownership is to be encouraged: "The State shall distribute State lands to peasants to whom land is not available sufficient to their living, against small rents to be repaid in installments." (Article 22.)[22]

642 Labor is regarded as "the most basic factor in social life," and
651 is "the right of all citizens." "The State shall provide work to citizens and shall guarantee it by directing and promoting the national economy." (Article 26.) The State undertakes to protect labor and provide legislation for the regulation of wages, hours of labor, allowances, and the improvement of social and health conditions. Trade unions are permitted to be formed within the limits of the law. Forced labor is prohibited except by law aimed at certain specific social and constructional services, and in case of war and emergencies.

642 Education is declared a right of every citizen. Elementary
871 education is compulsory and free in all Government schools. Secondary and professional education, though not compulsory, is also free in all Government schools. "The State shall give priority in the budget for the spread and expansion of elementary, rural, and professional education." The aim of education is defined as "the creation of a generation strong in body and mind, full of faith in God, endowed with moral virtues, proud in the

425 [22] On February 15, 1951, the Minister of Agriculture announced a plan for the distribution of 166,000 dunams (app. 41,500 acres) of State land in the Jazirah area among 554 Bedouin families of the Shammar Zor tribe. Each family will receive 300 dunams (75 acres), and each peasant, after paying the State LS 1.5 annually for 3 years, will own his share of the land. The State land is to be distributed among several villages, each village to receive 20,000 dunams (5,000 acres).

15: Khadduri S-4 (no date) 1951 MD1 Syria MD1

Arab heritages, equipped with knowledge, aware of its duties and obligations, working for the general welfare, imbued with the spirit of collaboration and fraternity among all citizens." (Article 28.) To achieve these ends the State undertakes to supervise all educational institutions in the country and to formulate programs to be applied in the various stages of training. The State alone has the right to grant and to standardize school certificates. Further, a Board of Education is to be set up to formulate educational policy and plans, the composition and functions of which are to be defined by law.

Military service is compulsory, the justification being that the defense of the country is a "sacred duty" and that the Army is the guardian of the Fatherland. The family is the basis of society and is to be protected by the State. The State protects and encourages marriage and endeavors to remove the material and social obstacles which hinder it.

The transitional provisions of the Constitution specify that within ten years from its coming into force illiteracy must be eliminated from the country. Another provision relates to the formulation of a plan for the gradual settlement of the tribes.

Finally, the Constitution stipulates that no amendment is to be made for two years. Thereafter the Constitution may be amended either by a proposal from the President with the approval of the Cabinet and Parliament if one-third of its members submit an application to this effect. Parliament will then consider the proposed amendment; if approved by an absolute majority, it is considered approved as a motion. If it is rejected, the rejection is final and no application for the amendment of the same article can be submitted again for one year. Six months after the adoption of a motion in favor of amendment, Parliament can begin to discuss the proposed alteration. A two-thirds majority is required for approval.

APPRAISAL

The Syrian Constitution of 1950 clearly reflects the influence of both the new European constitutions and the recent course of Arab nationalism. The socialistic trends reflect a realization of the need of rebuilding the social-economic system, which had

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

been long neglected owing to the preoccupation of Syrian nationalists with the more urgent political problem of achieving independence. When independence had been achieved, the Nationalist regime failed to command respect because of its reliance on the oligarchic and feudal groups held over from the old Ottoman period. It was still necessary, once the leaders of the national regime were overthrown, to adopt new social and economic measures before a truly democratic system of government would come into being. These socialistic provisions, however, are not of a Marxist nature, since they maintain almost intact the principles of private property and free enterprise.

One would expect a strong Arab nationalist tinge to the constitution of the country which had been, from the very beginning of the nationalist movement, the hot-bed of Pan-Arabism. Failure to achieve Arab unity following World War I did not quench the ardor for it as a nationalist goal. The establishment of the Arab League was hailed as an important step toward that end; but the League's failure to save Palestine from the Zionists again gave rise to a desire for a closer unity. The establishment of Israel, regarded as a threat to the Arab states, has aggravated this intense Pan-Arab feeling. Loyalty to the Pan-Arab ideal has made it difficult for Syria to make up its mind, in an Arab world divided into two camps, which of the two it should join, or whether it should join either. The new Constitution of 1950 has also been characterized as "spiritual" in that it requires religious teaching of all denominations and stresses ethical and spiritual values in life.[28] Relaxation in Government administration and wartime conditions have brought a noticeable deterioration in public morality not only in Syria but throughout the Arab world. The emphasis on religious and ethical values is partly to repair this decadence but probably more to create confidence in the new regime.

Finally, it is to be noted that the new Constitution is both extremely detailed in its provisions and rigid in the procedure of its amendment. Such provisions reflect the apprehension of the new group in power lest the elder politicians and vested interests

[28] See a lecture by the Rapporteur of the drafting committee, Dr. 'Abd al-Wahhab Hawmad, *Hawl al-dastur al-jadid* [*On the New Constitution*] (Damascus, 1950), pp. 8–9.

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

work the administration to their advantage. But such detailed provisions are likely to call for frequent amendment under the rapid changes of modern life, while the procedure of amendment is difficult and discourages change. Certainly Syria needs to avoid further revolutionary change, but the new Constitution, with its detailed provisions and rigidity, has not adequately provided legal means for peaceful evolution.

The rapid changes in Syria's regimes during the last two years since Colonel Husni al-Za'im precipitated the first coup d'état are not an accidental phenomenon when considered in the light of Syria's constitutional development since World War I. These changes, however, have been accelerated and in certain respects rendered dangerous by the introduction of the Army into the play of political forces. The Army's declarations that its interference was merely to rid the country of an undesirable administration and to maintain the republican regime have been taken by the Syrian people only at their face value; and far-sighted Syrians as well as disinterested foreign observers are still gravely concerned about what the future will have in store for Syria if the Army continues to interfere in politics whenever the civilian leaders advocate policies which run contrary to the wishes of the military. Judging by the recent experiences of Iraq with a similar situation, it would seem that either the Army will eventually take full control of political activities or it must be crushed as a political force.

Closely connected with Syria's internal struggle between the Army and the civilian politicians is the division of the Arab world into two rival camps; Syria is inevitably, though perhaps unwillingly, drawn into the resultant conflict. Each of these two camps has aggravated Syria's internal changes by supporting certain influential politicians and parties, hoping to orientate Syria in its direction. This political struggle in the Arab world has raised such issues as that of monarchy and republicanism, and has intensified the struggle among ambitious politicians who advocated such plans as those of Greater Syria, a Syro-Iraqi dual monarchy, and general Arab collective security.

Syria's most urgent need, it seems, is a stable government; but this depends now less upon Syria itself than upon external inter-

15: Khadduri S-4 (no date) 1951 MDl Syria MDl

ference in its affairs. If left alone, Syria may still be able to solve the Army-civilian struggle for supreme authority which is essential for internal stability. If, however, foreign interference — direct or inspired — continues, the future of Syria will depend accordingly on the larger problem of the stability and social-economic reorganization of the whole Arab world.